

**NECA** NATIONAL EXCHANGE  
CARRIER ASSOCIATION

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JUL 22 1991

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Joanne Salvatore Bochio  
Attorney

ORIGINAL  
FILE

July 22, 1991

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: National Exchange Carrier  
Association, Inc.'s Request for  
Rule Change Concerning the  
Composition of its Board of  
Directors

RM - 7736

Dear Ms. Searcy:

Enclosed herewith for filing with the Commission are the original and five copies of the National Exchange Carrier Association, Inc.'s Reply in the above-captioned matter.

Please acknowledge receipt hereof by affixing a notation on the duplicate copy of this letter furnished herewith for such purposes and remitting same to bearer.

Very truly yours,

*Joanne Salvatore Bochio*  
Joanne Salvatore Bochio

JSB/jt

Enclosures

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JUL 22 1991

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of:

National Exchange Carrier  
Association, Inc. Request for  
Rule Change Concerning the  
Composition of its  
Board of Directors

RM 7736

REPLY

The National Exchange Carrier Association, Inc. (NECA) submits this Reply to Comments filed on July 10, 1991 in response to the Commission's Public Notice in the above-captioned proceeding.<sup>1</sup>

I. BACKGROUND

On May 24, 1991, NECA filed a Petition for Rulemaking and requested that the Commission revise Section 69.602 of its rules (47 C.F.R. § 602) so that, effective January 1, 1992, NECA could expand its Board to seventeen members to include two outside directors who are not from the telephone industry. Because of election schedule requirements, NECA also simultaneously filed a Petition for Waiver so that it would have authority to pursue the election of outside directors by August 30, 1991.

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<sup>1</sup> Pleading Cycle Established for Comments on Petition for Rulemaking and Petition for Waiver Concerning Composition of NECA's Board, Public Notice, DA 91-683, released June 7, 1991 (Notice).

In its Petition, NECA stated that it was initiating its proposal in response to the Commission's November 9, 1990 letter to

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## II. DISCUSSION

Comments in general support NECA's Petition.<sup>4</sup> NTCA, NARUC and IUB state that NECA's request promotes public confidence in its processes.<sup>5</sup> USTA endorses NECA's request, although it "perceives that there is no basis for any conclusion that NECA has improperly or unlawfully carried out its fiduciary duties and legal obligations to date . . . ."<sup>6</sup>

While the commenting parties support NECA's proposal, they suggest modifications to ensure that NECA will have directors with the skill and experience to perform required responsibilities. Both NTCA and USTA recall the Commission's decision creating NECA and its board and the Commission's reasoning that the governing board of NECA should be composed exclusively of exchange carrier

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<sup>4</sup> Beehive raises objections that are irrelevant to this proceeding or have been previously addressed by the Commission. See, e.g. In the Matter of Rules pertaining to the National Exchange Carrier Association, Inc., Order, 2 FCC Rcd 1 (1987). This Order denied Beehive's petitions for placement of various restrictions on NECA Board membership, filed on October 17, 1984 and July 30, 1985. In the Order, the Commission agreed with those commenters who observed "that the Association benefits from directors who possess experience, knowledge, and a contemporaneous awareness of the concerns of exchange carriers throughout the United States." Id. Beehive also argues without any support that NECA's Board essentially remains unchanged since its inception. This allegation is erroneous. In fact, in NECA's eight year history, the average service of a board member has been three years. Only three of the original directors remain on NECA's Board today and one of these is not seeking reelection in 1992.

<sup>5</sup> See, NTCA at 2, IUB at 1, and NARUC at 5.

<sup>6</sup> USTA at 2.

representatives.<sup>7</sup> As quoted by NTCA at 3, the Commission stated in the Third Report and Order which mandated NECA:

We have also decided not to accept suggestions that state commissions, interexchange carriers or consumers be represented on the governing board of the association. As we stated in the Fourth Supplemental Notice, "the Communications Act already provides safeguards adequate to protect the interests of these groups in the fair, evenhanded implementation of any access charge plan we might adopt."

With this Commission policy in mind, NTCA disagrees with NECA's restriction of former employees or retirees of telephone companies from outside director consideration. NTCA states that this limitation "excludes a range of qualified persons who may have no existing ties to member companies but possess valuable knowledge and skills and the ability to perform the fiduciary duties required of Board Members."<sup>8</sup> NTCA would therefore change NECA's proposal to exclude only current employees or officers of NECA and exchange carriers.

NECA specifically excluded former telephone company employees or retirees from outside director consideration when it drafted its Petition to ensure that outside directors would be free from any influence of the exchange carrier industry. While the rationale for NTCA's proposed modification is sound and NECA agrees that

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<sup>7</sup> See USTA at 3 and NTCA at 2-4 citing In the Matter of MTS and WATS Market Structure, Third Report and Order, 93 FCC 2d 241,334 (1983) (Access Charge Order), recon., 97 FCC 2d 682 (1984), 97 FCC 2d 834 (1984), 99 FCC 2d 708 (1985), aff'd in principal part sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FCC, 737 F.2d 1095 (D.C. Cir. 1984), cert. denied, 469 U.S. 1227 (1985).

<sup>8</sup> NTCA at 5.

telecommunications knowledge is important to NECA Board deliberations, NECA believes that on balance, its original proposed rules will provide for the utmost outside director objectivity. As NECA stated in its original petition, "it believes that skills and experience from outside the telephone industry would be valuable assets and would complement NECA's commitment to the highest standards of conduct."<sup>9</sup>

NECA does not agree with IUB's proposal that current state or federal regulators should serve on its board.<sup>10</sup> Being a current regulator would provide substantial conflicts of interest for all parties involved. The current regulator would have to recuse himself or herself from many NECA board discussions concerning

would affect the efficiency of NECA's operations, a result that would disserve both consumers and the public interest."<sup>12</sup> With respect to IUB's suggestion that NECA's petition be deferred until the NECA audit is completed, NECA believes that the Commission can gain valuable experience by expeditiously granting NECA's waiver in this proceeding.<sup>13</sup> This experience should assist the Commission in adopting final rules.

### III. CONCLUSION

Commenting parties support NECA's proposal to add two outside directors to its board. The Commission should therefore adopt NECA's proposed rule revisions.

Respectfully Submitted,

NATIONAL EXCHANGE CARRIER  
ASSOCIATION, INC.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Reply Comments were served this 22nd day of July, 1991, by mailing copies thereof by United States Mail, first class postage prepaid, to the persons listed.

By:

  
Jennifer Kauch

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